In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1232

JOHN PIERCE HELLAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 3a–9a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on February 7, 1967. Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to April 8, 1967, and on April 7, 1967, the petition was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner should have been granted a severance.

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2. Whether petitioner was deprived of a fair trial because two witnesses, who had been convicted of other crimes but had not yet been sentenced, testified against him.

STATEMENT

After a jury trial in the United States District Court for the Western District of South Carolina, petitioner was convicted, with seven others, of conspiracy to sell stolen automobiles and of four counts of receiving and selling stolen vehicles (18 U.S.C. 371 and 2313). On March 25, 1966, petitioner was sentenced to concurrent terms of imprisonment for five years on each of the substantive counts, and to five years' imprisonment on the conspiracy count, the latter sentence to be consecutive to the other five year terms. The court of appeals affirmed.

The evidence, the sufficiency of which has not been challenged, showed that petitioner operated a used-car business, Laurens Auto Sales, in South Carolina, and that he there knowingly received from his co-conspirators cars stolen in interstate commerce. The stolen vehicles had been selected to match the characteristics (make, model, color, *etc.*) of lawfully purchased salvaged cars; the serial number plates, and frequently the titles, of the latter were used for the stolen vehicles, which petitioner then sold in the course of his business. (Tr. 284–285, 436–438, 440, 442, 502–503, 513, 516–517, 541, 563.)[1]

[1] References are to the transcript ("Tr.") of trial, the two volumes of which we are lodging with the Clerk of the Court, and to petitioner's appendix in the court below ("R. I"), which was filed with the petition.

ARGUMENT

1. Petitioner moved for a severance before the jury was empaneled and later during the course of trial (R. I 35a; Tr. 297). The denial of the motions was a permissible exercise of the trial court's discretion (see *Opper* v. *United States,* 348 U.S. 84, 95) and raises no issue warranting review in this Court. Petitioner points to no basic conflict among the defense theories,[2] no significant evidence admitted at the joint trial that would have been inadmissible against him alone, no likelihood that the joint trial confused the jury to his prejudice,[3] and most importantly (see *Krulewitch* v. *United States,* 336 U.S. 440; *Delli Paoli* v. *United States,* 352 U.S. 232) no inculpatory statement of one of his co-conspirators or co-defendants that was used against him. We also note that petitioner was not on the fringe of the conspiracy; on the contrary, his used-car business was a keystone of the scheme and he was a major and active participant in it. Indeed, he was convicted on four substantive counts of receiving the stolen cars, in addition to the conspiracy charge.

2. Two of the principal witnesses against petitioner (Fuller and Roberts) had pleaded guilty in State and federal courts to automobile theft, receiving stolen

[2] The evidence petitioner refers to as having "damaged" him (Pet. 7) plainly did so only because of his integral involvement in the conspiracy. That some of that evidence was gratuitously elicited by counsel for other defendants does not establish that the defense theories were inconsistent or that petitioner was prejudiced.

[3] The jury returned a not guilty verdict on count 13, which charged petitioner with having transported an additional stolen car in interstate commerce; it would thus appear that the jury was clearly able to differentiate among the various charges.

goods, and alteration of serial numbers. At the time of their testimony they had not yet been sentenced (Tr. 431–432, 538, 546). Petitioner contends that it was an infringement of his constitutional rights for the evidence of these witnesses to be admitted at his trial,[4] arguing that they were under strong pressure to testify favorably for the government. The situation of the witnesses, each of whom denied receipt of promises from the government, and their credibility (which was explored by petitioner's counsel on cross-examination, see Tr. 476–477, 547) were matters for the jury's consideration. See, *e.g.*, *Diaz-Rosendo* v. *United States*, 357 F. 2d 124, 130 (C.A. 9), certiorari denied, 385 U.S. 856; *United States* v. *Rainone*, 192 F. 2d 860 (C.A. 2).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1967.

[4] Petitioner also objects (Pet. 12) to the testimony of a third witness (Lejune), named as a co-conspirator but not indicted, who had previously been convicted and sentenced (Tr. 511) to imprisonment by a state court for car theft. The prosecutor could choose, in his discretion, not to prosecute Lejune, and the fact that he did so obviously does not render Lejune incompetent to testify.

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